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IN THE

Supreme Court of the United States

October Term, 1965
No. .....

CHARLOTTE ANDREWS,

Petitioner,

vs.

THE CITY OF SAN BERNARDINO, a Municipal corporation, THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, a State Agency,

Respondents.

Brief of Respondents in Opposition to Petition for Writ of Certiorari.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Questions Presented.

Three questions are presented by the Petition, but for purposes of clarity, Respondents restate them as follows:

I.

Whether any Federal question is involved, where a City Council, in establishing a Redevelopment Agency, pursuant to State Law, does so, contrary to an *advisory* electorate vote requested by a *former* City Council.

II.

Whether any Federal question is involved, where a City Council, in holding a hearing as required by State

Law, on a Redevelopment Plan, refuses to accord opponents a *judicial-type* hearing, as opposed to a *legislative-type* hearing.

III.

Whether any Federal question is involved, where a City Council, pursuant to State Law, refuses to call a referendum election on an ordinance *non-legislative* in character.

Jurisdiction.

None of the issues presented raise substantial Federal questions which would warrant review by this Court on *certiorari*. In each case, the Decision of the State Court rests on an adequate non-Federal basis.

Furthermore, these *identical issues* were raised by Petitioner before this Court in the case of *Charlotte Andrews v. City of San Bernardino, et al.*, No. 137, decided adversely to Petitioner by this Court on October 10, 1960, and rehearing denied on November 14, 1960 (see Notice of Appeal and Jurisdictional Statement in said case).

Statement of the Case.

The State of California adopted a Community Redevelopment Law in 1945, which Act has been frequently amended (Health and Safety Code, Sections 33000-33954).

In November, 1950, the Mayor and Common Council (five members) of the City of San Bernardino, a Chartered Municipal Corporation in Southern California, decided to ask its electorate for its opinion as to whether a Redevelopment Agency should be established in the City, under the State Community Redevelopment Law (hereinafter referred to as the "Act").

The Act provided that such an Agency could be established by resolution of the City Council, declaring a need for an Agency, and then appointing five resident electors as members thereof (Health and Safety Code, Section 33230).

The ordinance calling such election specifically declared:

> "Whereas, on the 13th day of September, 1950, the Common Council of the City of San Bernardino passed a motion directing that an *advisory proposition* in regard to the Urban Redevelopment Program, be put upon the November ballot . . ."

This was not a Special Election. The proposition appeared on the ballot at the General Election *fifteen years ago,* specifically in November, 1950, and did receive a negative vote by a majority of the City electorate.

Approximately a *year and a half later,* on June 23, 1952, a *different* Mayor and Common Council (a new Mayor and three new members of the Common Council having been elected at a municipal election in April, 1952) did adopt a resolution declaring *at that time* the need for a Redevelopment Agency, and on September 2, 1952, appointed five of its citizens as its first directors.

Thereafter, it took *six years* before a Redevelopment Plan for the City achieved reality. The steps are as follows:

1. *January 30, 1958.* Pursuant to the Act, the Redevelopment Agency held a *public hearing* on Notice published for four weeks, as required by the Act, on its tentative plan, known as "Meadowbrook Project No.

1." Petitioner and other persons owning property in the area responded to said Notice and offered opposition to the plan, and participated in the hearing, at the conclusion of which the Agency approved the tentative plan for submission to the City Council.

2. *February 4, 1958.* The City Planning Commission, in accordance with the Act, approved the tentative plan and recommended its adoption by the City Council.

3. *March 4, 1958.* The City Council held its first hearing on the tentative plan, after giving three weeks of published Notice, as required by the Act. At this hearing Petitioner, and other persons interested, were present and represented by Mr. Manuel Ruiz, Petitioner's attorney herein. He requested a continuance for *three weeks* to obtain and file a report from a Los Angeles Engineer, Henry A. Babcock. Although not required by law to do so, the City Council deferred action and continued the hearing for three weeks to allow this report to be filed.

4. *March 25, 1958.* The City Council held its Adjourned Meeting to consider the tentative plan. At that time, this Petitioner, through her Attorney here of Record, then requested a 90-day *additional* continuance, to obtain the services and report from Engineer Babcock. The City Council denied this request and approved the tentative plan by its Ordinance No. 2217.

5. *July 1, 1958.* The City Council held on this day, after publishing Notice, as required by the Act, a hearing on the adoption of the Final Redevelopment Plan. At this hearing, the Agency filed additional documentary materials, studies and reports, in support of the Plan.

Petitioner and other persons present, represented by Mr. Manuel Ruiz, Petitioner's Attorney herein, (1) did not present any alternative plan, although it was provided for by the Act; (2) did not submit any report from Engineer Babcock, although 90 days had elapsed since the hearing on the tentative plan; but (3) *for the first time,* asserted the right to a *judicial-type* hearing, announced that it would take *three weeks* to produce the testimony, and that Petitioner desired to call some 63 witnesses to testify by *question and answer,* under interrogation by Attorney Ruiz, as to conditions of *blight* or *non-blight* in the project area, in spite of the fact that the issue of *blight* had been resolved by the City Council, in adoption of its Ordinance No. 2217, on March 25, 1958.

In addition, Petitioner's Attorney Ruiz announced that he intended to call as witnesses, and interrogate, as if in Court, the *five members* of the Redevelopment Agency, who had approved the plan, the *nine members* of the Planning Commission, who had approved the plan, as well as the Chief of Police and head of the City Health Department, whose reports on law enforcement problems and health standards in the project area, were on file before the City Council. Petitioner's Counsel objected to consideration by the City Council of reports, surveys, and studies, which had been filed with it by the Agency, on the ground that the same were not submitted *under oath,* in spite of the fact that the Act specifically provided for the reception of such evidence in support of the plan (Health and Safety Code Sections 33560, 33565, 33571 and 33730).

Section 33571 states that the ordinance establishing the findings should be based on "surveys, investigations and reports of public agencies, and *any other informa-*

tion, showing the extent and character of blight . . ." At this hearing, the Mayor *invited all persons* in the audience who desired to speak, either for or against the plan, to address the Council, and a number of persons present did so. Petitioner's attorney made an *offer of proof,* in *legal trial form,* which indicated that the oral testimony of his witnesses would relate to the issue of blight already resolved by the findings made by the City Council at its meeting on March 25, 1958. At the conclusion of this hearing, the City Council adopted the Final Redevelopment Plan by its Ordinance No. 2233.

In accordance with the Act (Health and Safety Code Section 33742), this ordinance contains no *law, rule or regulation,* but only a series of *findings* such as: (a) that the Redevelopment Agency was created; (b) that it had approved a tentative plan and that the City Council had approved the tentative plan after due notice required by the Act; (c) a description of the plan and provision for expenditure of monies to implement it; (d) designation of streets to be closed; (e) legal description of the boundaries of the project; (f) that the plan conforms to the City Master Plan; (g) that it is economically sound and feasible and will promote public peace, health, safety and welfare; (h) that financial aid to be provided by the Housing and Home Finance Administrator, was necessary; (i) that the plan will afford maximum opportunity for redevelopment by private enterprise; (j) a provision for division of taxes.

As will be seen, the entire ordinance is *procedural only,* similar to other procedural ordinances by which a City Council is required by State Act or City Charter, to act in ordinance form, such as an ordinance calling an election, an ordinance designating the names and streets, an ordinance closing a street, etc.

Nevertheless, Petitioner caused to be circulated a referendum petition with respect to said ordinance, and obtained the necessary signatures for a referendum election. The City Council denied the right to referendum, on the opinion of its City Attorney, that this was not the *type* of an ordinance to which the referendum applied, being procedural only and containing no legislation affecting the rights of individuals.

Petitioner filed her *first* action in the San Bernardino County Superior Court on April 15, 1958, after the hearing on the tentative plan, and her *second* action in the same court on September 17, 1958, after the hearing on the Final Plan and denial of her right to a referendum. In the intervening period, the cases have been before the San Bernardino Superior Court 6 times, the California Fourth District Court of Appeals, 11 times, the California Supreme Court, 6 times, and the United States Supreme Court on an Appeal in *both* actions in October, 1960, and in *all* of said Court tests, the Courts have decided in favor of Respondents. Of these, the most important decisions are those of *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 454, and *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 459, and *Andrews v. City of San Bernardino,* California Fourth District Court of Appeal, 4th Civil No. 7393, which appears as Appendix "B", of the Petition herein.

The first two cases provide a full and complete answer to the *first* and *third* questions propounded by the petition on file herein, and the last enumerated case provides a complete answer to the *second* question, indicating that no Constitutional or other Federal rights have been infringed, and that there is an adequate non-Federal basis to all contentions of Petitioner.

ARGUMENT.

1. The "Advisory Proposition" of 1950, Under State Law, Had No Legal Effect on the Actions of the San Bernardino City Council, in June 1952.

This issue does not present any substantial Federal question, and the judgment of the State Court rests on an adequate non-Federal basis.

This issue was fully disposed of in the case of *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 454 (1959), adverse to Petitioner. Petition for hearing in the State Supreme Court was denied. It was also raised as an issue in Petitioner's appeal to this Court in Case No. 137, October Term, 1960, and Petitioner's appeal, treated as an appeal, was dismissed on motion and treated as a Petition for Writ of Certiorari, certiorari was denied.

The City Charter of the City of San Bernardino in Section 30, provides that "the legislative power of the City is hereby vested in the Common Council, consisting of five members . . ."

The "Advisory Proposition," submitted to the electors, was on the motion of the City Council, and was neither an initiative measure proposed by the people, or a referendum proposed by the people.

The California Decisions are clear that a vote on such a proposition is a complete nullity. (See *Thompson v. Board of Trustees of the City of Alameda,* 144 Cal. 281, and *Galindo v. Walter,* 8 Cal. App. 234; also, Volume 31 of Attorney General's Opinions of California, page 100, advising the City Council of the City of Coronado, that "advisory elections, having no statutory

basis, are invalid . . . thus, a proposition passed by the voters was a legal nullity.")

Furthermore, as pointed out above, the Act provides that a local Redevelopment Agency is created by a resolution of the City Council, and the City Council, which, in June 1952, created the local Redevelopment Agency, was a *different* Council, comprising a new Mayor and three newly elected councilmen, elected at a General Municipal Election in April, 1952, *one and one-half years* after a former Mayor and City Council submitted the "Advisory Proposition" to the voters.

The decision of the Fourth District Court of Appeal of California (Petitioner's Appendix "B"), holds that the prior decisions of the California Courts are *res judicata* of said issue. As stated by the Court:

> "Appellant may not relitigate those issues. She may be comforted, however, by the reflection that the prior decisions were correct, as to the matters of law decided therein."

2. Petitioner Was Not Entitled to a Judicial-Type Hearing Before the City Council, in Considering Adoption of the Redevelopment Plan.

Here again, Petitioner presents no substantial Federal question and the decision under review disposes of the issue on an adequate non-Federal basis.

Petitioner attempts to make out that since she failed in her attempt to have the City Council conduct the hearing on the Final Redevelopment Plan, as if it were a Court of law, that thereby her Constitutional rights were denied.

As indicated in Respondents' Statement of the Case, *supra,* and also Petitioner's Petition, pages 8-17, incl.,

Petitioner expected the City Council to sit as a *Judicial body,* applying rules of evidence and providing for examination and cross-examination of witnesses, as though it were sitting as a Court.

The Law of California does not so provide and the decisions of the State are directly contrary (See *Franchise Tax Board v. Superior Court,* 36 Cal. 2d 538; *City Council of Santa Barabara v. Superior Court,* 179 Cal. App. 2d 389; *East Bay Municipal District v. Department of Public Works,* 1 Cal. 2d 476; *Berggren v. Moore,* 61 Cal. 2d 347 (1964), and *Flagstad v. City of San Mateo,* 156 Cal. App. 2d 138).

The California Appellate Decision now under review, Petitioner's Appendix "B", relies on the *Flagstad* and *Berggren* cases, and also the New Jersey decision of *Wilson v. Long Branch,* 142 A. 2d 837.

The Court then goes on to state that it is not its province to reweigh the evidence presented before the City Council, which was voluminous. The documentary evidence received at the trial consisted of 79 exhibits, being reports, surveys, analyses, letters, maps, Master Plan, and other documentary evidence, all of which was admissible for consideration by the City Council, under the provisions of the Act (Health and Safety Code Sections 33565, 33571 and 33730.)

Since this *identical question* is raised by Petitioner in her first appeal to this Court, Case No. 137, October Term, 1960. (See Notice of Appeal and Jurisdictional Statement, therein), it would seem inappropriate to belabor this Court with this issue a second time.

3. Referendum Provisions of City Charter of San Bernardino Are Not Applicable to an Ordinance Administrative in Character.

The decision on this issue also rests on a solid and adequate non-Federal basis and is an exact repetition of one of the points on appeal made to this Court by Petitioner in 1960, in the case of *Charlotte Andrews v. City of San Bernardino,* Case No. 137.

Moreover, this issue was decided adverse to Petitioner in the case of *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 459, by the California Fourth District Court of Appeal on November 19, 1959, and rehearing denied by the State Supreme Court on January 13, 1960.

As that opinion indicates, the City's Ordinance No. 2233, which Petitioner proposed to be submitted to a referendum, was *not legislative in character,* but was "merely an exercise of the executive and administrative powers of the Council, and is therefore not subject to referendum proceedings."

In said case, numerous California Decisions are indicated as decisive of the question, such as, *Housing Authority v. Superior Court,* 35 Cal. 2d 550; *Kleiber v. City of San Francisco,* 18 Cal. 2d 718. Earlier rulings of the California Courts are to like effect, such as *Hopping v. City of Richmond,* 170 Cal. 605, and *McKevitt v. City of Sacramento,* 55 Cal. App. 117. See also, *Lockhart v. City of Bakersfield,* 123 Cal. App. 2d 728, in which it was held that referendum was inapplicable stating "the City may not be restrained from

performing the administrative acts required of it by State Law." (Under consideration was the State Housing Law, similar to the State Redevelopment Law).

Petitioner does not cite one single case, or authority, as to how or in what manner a Federal issue is presented on this subject.

Conclusion.

Since April 15, 1958, Petitioner has attacked the procedural steps whereby the City and its Agency has carried forward its Redevelopment Project. Since that date, in 24 Court tests (Superior Court, 6; District Court of Appeal, 11; State Supreme Court, 6; U. S. Supreme Court, 1), she has been uniformly unsuccessful, and her contentions and argument decidely adversely to her.

Meanwhile, the City's Redevelopment Project has moved steadily forward, until today it is overwhelmingly successful in fulfilling its purpose. Of the original 150 parcels embraced in the Project, all have been acquired by the Agency, except 22. There remain only 11 dwellings and only 5 are owner-occupied. It has made borrowings from the U.S. Government in excess of $14,000,000.00. It has sold parcels into private ownership of a value over $700,000.00, on which construction has been completed, or in progress, totalling over $3,500,000.00. The assessed value of the land acquired has increased approximately $12,000,000.00. The redevelopment of the area is an assured success.

The Petition reveals no infringement or deprivation of Constitutional or other Federal rights on the part of the Petitioner, or any other owners. Petitioner has presented no question or argument, not included in her prior appeal to this Court, in Case No. 137, October Term, 1960. The decision of the State Court on every issue in question, rests on a solid, adequate, non-Federal basis. For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

WALDO WILLHOFT,
Counsel for Respondents.

October 30, 1965.

APPENDIX "A."

SUPREME COURT OF THE UNITED STATES

ANDREWS *v.* CITY OF SAN BERNARDINO ET AL.,

APPEAL FROM THE DISTRICT COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT.

No. 137. Decided October 10, 1960.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.